

# Order

Michigan Supreme Court  
Lansing, Michigan

December 2, 2009

Marilyn Kelly,  
Chief Justice

138084

Michael F. Cavanagh  
Elizabeth A. Weaver  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman  
Diane M. Hathaway,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 138084  
COA: 278577  
Wayne CC: 06-014189-01

MICHAEL LORENZO ANTHONY,  
Defendant-Appellant.

On order of the Court, the application for leave to appeal the November 20, 2008 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

MARKMAN, J. (*concurring*).

I concur, but write separately to acknowledge the merit in defendant's claim that he was improperly assessed 25 points for OV 13 (continuing pattern of criminal behavior) because his most recent offense was committed ten years before the instant offense. *People v Francisco*, 474 Mich 82, 87 (2006) (only crimes committed within a five-year period are considered for the purposes of OV 13). Nonetheless, trial counsel expressed satisfaction with the inaccurate score that rendered defendant's sentence a 12½-year upward departure from the range that would have resulted from an accurate score. In his application, defendant does not properly raise the claim that trial counsel was ineffective for failing to correct this scoring error. See *People v Kimble*, 470 Mich 305, 314 (2004). If there is to be relief, it must come in response to a motion for relief from judgment. MCR 6.508(D).

HATHAWAY, J., not participating. Justice Hathaway recuses herself and will not participate in this case as she was the presiding trial court judge. See MCR 2.003(B).



dl124

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 2, 2009

*Corbin R. Davis*

Clerk